

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 13660 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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BHIKHABHAI CHANABHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR PJ VYAS for Petitioner(s) : 1,
Mr.Dipen Desai, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 4.
MR HARSHAD K PATEL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 29/11/2006

ORAL JUDGMENT

1. Rule. Mr.Desai waives service of notice of
rule for respondent nos.1 and 2, Mr.J.R.Nanavaty

appearing with Mr.Patel for respondent no.3. Respondent no.4 is served but he has chosen not to appear and it appears that in view of the order passed by this Court as stated hereinafter, the respondent no.4 will not be put to prejudice in the event the matter is remanded to the Tribunal as finally ordered hereinafter, since in any case revision was preferred by them.

2. The petitioner has preferred the petition for challenging the order passed by the Gujarat Revenue Tribunal dated 31.3.99 in Revision Application No.TEN/BA/174/97 whereby the revision is dismissed.

3. Heard Mr. Vyas, learned counsel appearing for the petitioner, Mr.J.R.Nanavaty with Mr.Patel for private respondent no.3 and Mr.Desai, learned AGP for respondent nos.1 and 2.

4. Upon hearing learned advocates appearing for both the sides, it appears that there is no dispute on the point that the petitioner who purchased the land under the registered sale deed dated 25.3.96 from deceased Manubhai Ishwarbhai Patel, was neither joined as a party nor was heard by the Tribunal before passing the order which is impugned in this petition. It is the contention of the petitioner in the petition that the deceased Manubhai Ishwarbhai Patel who has expired on 18.7.99 did not disclose the fact of transferring the land to the petitioner and also of mutation dated 18.4.96 vide no.4745 in favour of the petitioner based on the registered sale deed

executed in favour of the petitioner. As per the petitioner, neither the petitioner was aware of the litigation nor any opportunity of hearing was given and after the knowledge acquired by the petitioner of the decision of the Tribunal, the petitioner has approached to this Court by the present petition.

5. Mr.Vyas, learned counsel appearing for the petitioner submitted that there is delay on the part of the petitioner in challenging the order of the Tribunal and as per the petitioner, the petitioner came to know only when the entry was recorded in village form no.7 and 12 for the order passed by the Revenue Tribunal and, thereafter, immediately after getting the certified copy of the order, the petition is preferred. It is further contention of the petitioner that the petitioner is a bonafide purchaser and will be deprived of the land if the order of the Tribunal is allowed to operate without considering the stand of the petitioner since the petitioner would be directly affected by the order of the Tribunal.

6. When the matter was considered for the first time on 14.7.06, the following order was passed.

“Mr.Vyas, learned counsel appearing for the petitioner states that without prejudice to the rights and contentions of the petitioner in this petition, the petitioner is ready to deposit the amount of Rs.20,000/- for compensating the delay caused in preferring the petition.

In view of the above, Notice returnable on 4th August, 2006. The petitioner shall deposit the amount of Rs.20,000/- with this Court on or before 26th July, 2006."

The said amount of Rs.20,000/- is already deposited by the petitioner with this Court on 17.7.06.

7. I would have considered the matter further for examining various contentions raised on behalf of parties to the proceedings on the aspects of taking lenient view for delay by suitably compensating to the affected party and also on the aspects of examining the legality and validity of the order passed by the Tribunal, however, the learned counsel appearing for the petitioner, learned AGP as well as learned counsel appearing for respondent no.3 have no objection if the matter is remanded to the Tribunal for rehearing and deciding the matter afresh after giving opportunity of hearing to the petitioner herein by awarding reasonable cost for compensating the delay caused by the petitioner in preferring the petition. Therefore, I find that no detailed discussion may be required on the said aspects but suffice it to record that even in the matter of condonation of delay, the Court may consider the aspects for the delay by awarding suitable amount as compensation to the affected party in the event the rights of the parties are not altered during the said period of delay. Further in any case, the petitioner who was to be affected by the order of the Tribunal is not given opportunity of hearing and, therefore,

if the matter is reheard by the Tribunal after giving opportunity of hearing to the petitioner, no serious prejudice will be caused to the other parties to the proceedings, more particularly, when the delay can suitably be compensated by awarding the reasonable amount to the other parties to the proceedings.

8. In view of the above, the impugned order of the Tribunal dated 31.3.99 is quashed and set aside only on the ground of non-hearing to the petitioner but on condition that the petitioner pays the amount of Rs.10,000/- to respondent no.1 and 2 and further amount of Rs.10,000/- to respondent no.3 towards compensation for delay caused in preferring the present petition and the cost of the present litigation. As the amount is already deposited by the petitioner in pursuance of the order dated 14.7.2006 passed by this Court, the concerned respondent/s shall be at liberty to withdraw the amount from this Court through their advocate. It is further directed that the revision shall be restored to the file of the Tribunal and the Tribunal shall give opportunity of hearing to the petitioner as well as to the other parties to the proceedings and shall pass a fresh order in accordance with law as early as possible, preferably within a period of six months. A formal order, if required, will also be passed by the Tribunal for impleading the petitioner as party to the proceedings.

9. Rule is made absolute to the aforesaid extent.

(JAYANT PATEL, J)

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